

REMARKS

This responds to the Office Action dated on November 28, 2006.

Claims 15 and 17 are amended and no claims are canceled or added in this response; as a result, claims 1-2, 4-5, 7-12 and 14-19 remain pending in this application.

Information Disclosure Statement

Applicant submitted an Information Disclosure Statement and a 1449 Form on September 28, 2006. Applicant respectfully requests that an initialed copy of the 1449 Form be returned to Applicant's Representatives to indicate that the cited references have been considered by the Examiner.

Pending Claims

The Summary Page of the Office Action indicates that claims 1-18 are pending. Applicant notes that claims 3, 6 and 13 were canceled and claim 19 was added in the response filed October 2, 2006. As a result, claims 1-2, 4-5, 7-12 and 14-19 are pending.

§103 Rejection of the Claims

Claims 1-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Alexander et al. (U.S. Patent No. 6,189,111) in view of Le et al. (U.S. Patent No. 6,145,089) in view of Chao et al. (U.S. Patent No. 6,438,705). In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947

F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully traverses the rejection because the combination of Alexander, Le and Chao fails to teach or suggest all of the claim limitations.

For example, claim 1 recites a high availability script execution component that is operable “receive a failover script comprising a set of one or more commands and further operable to receive at least one failover attribute and operative to cause the failover script to be interpreted to produce a run-time failover domain from an initial failover domain.” Claim 2 recites similar language. The Office Action, with respect to the recited language, first states that Alexander at column 6, lines 40-50 teaches “a high availability script execution component (i.e. routine execution mechanism).” Applicant respectfully disagrees with this interpretation of Alexander. The cited section of Alexander merely makes a generalized comment that a routine may be executed to investigate an error and take an action. Nowhere in the cited section nor in Alexander as a whole is a script execution component taught that interprets a failover script. In fact, the phrase “execution of a routine” appears to imply execution binary code (e.g. a subroutine) rather than script execution.

Further, the Office Action states that Alexander, at column 5 lines 40-50, column 6 lines 19-21, column 8 lines 40-42 and column 9 lines 32-33 teaches producing a runtime failover domain from an initial failover domain because Alexander teaches “recognizing the failing node and removing it from the bitmap.” Applicant notes that nowhere does Alexander teach that the bitmap is manipulated by a failover script that is interpreted to produce a run-time failover domain. Rather, the Alexander teaches the rote removal of a failing node. Alexander does not teach that a script is interpreted and that provides logic to intelligently produce a failover domain. The intelligent selection of a failover domain through the use of a failover script provides advantages over Alexander in that a failover domain may be produced that includes machines that are best able to take over for the failed node rather than the rote inclusion of any remaining node in the cluster as reflected by a bitmap.

The Office Action correctly states that Alexander does not “specifically state that upon the detection of a failover event, executing a failover script comprising a set of one or more commands.” However, the Office Action attempts to make up for the deficiency by stating that Le, at column 4, lines 37-60, column 5, lines 53-67, and FIG 4 ref. 450 teaches a failover script.

Applicant respectfully disagrees with this interpretation of Le. The failover script as defined and properly interpreted in the claims includes commands that provide a user the opportunity to define commands that will determine a run-time failover domain, thereby providing for flexibility in determining a run-time failover domain. None of the scripts mentioned in Le produce a run-time failover domain. Instead, the scripts in Le are more akin to action scripts in that they “start, stop, and restart a service or services” (see column 4, lines 37-52). Thus Le fails to teach a failover script.

Applicant has reviewed Chao and can find no teaching or suggestion of a failover script that receives an input domain and is interpreted to produce a run-time failover domain.

In view of the above, the combination Alexander, Le and Chao fails to teach each and every element of claims 1 and 2. Thus claims 1 and 2 are not obvious in view of the combination of Alexander, Le and Chao. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1 and 2.

Claims 11-12, 14-15 and 19 depend directly or indirectly on claim 1. Claims 4-5, 7-10 and 16-18 depend, directly or indirectly on claim 2. These dependent claims are patentable over Alexander, Le and Chao for the reasons argued above, and are also patentable in view of the additional elements which they provide to the patentable combination. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. MPEP § 2143.03.

Further, claim 7 recites that “the action script verifies that the resource is configured on the target node.” Claims 8 recites verifying that the resources is not already running on the target node. The Office Action asserts that Alexander, at column 9 lines 18-25 teaches the recited language in stating that Alexander’s “ASSERT macros that perform consistency checks and can be used on candidates for harvesting; and can further be used by applications for validation purposes.” Applicant respectfully disagrees. As clearly stated in the cited section, an ASSERT macro performs ad-hoc consistency checks and causes a panic (i.e. a shutdown) if the asserted condition is not true. Kernel or application code that checks for internal consistency of data structures is entirely different from executing an action script that verifies a resource is configured or not already running on an external target node. As a result, Alexander does not teach or suggest the recited language. Applicant respectfully requests reconsideration and the

withdrawal of the rejection of claims 7 and 8.

Additionally, claims 15 and 17 have been amended to clarify that load balancing events may be independent of node failure. Applicant has reviewed Alexander, Le and Chao and can find no teaching or suggestion of load balancing in the absence of a node failure. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 15 and 17.

Further, claim 19 recites “an application plug-in that provides a high-availability interface for the application.” The Office Action asserts that Alexander, at column 3, lines 8-20 discloses the recited language, interpreting a plug-in as “an interface utilized to communicate with a user or client application.” Applicant respectfully disagrees with this interpretation of Alexander. First, nowhere does Alexander teach or suggest an application plug-in. The section of Alexander cited in the Office Action does not refer to interfaces, and nowhere does the term “plug-in” appear in Alexander. In fact, the cited section of Alexander explicitly states that the operating system “handles the details of processing a system failure when detected.” Thus Alexander in fact teaches away from the use of application plug-ins to provide a high-availability interface to convert an application to a high availability application. In view of the above, none of Alexander, Le or Chao teach or suggest the use of an application plug-in to convert an application into a high-availability application. Thus the combination fails to teach or suggest each and every element of claim 19. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 19.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant’s silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. Applicant reserves all rights to

pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

PADMANABHAN SREENIVASAN ET AL.


By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6954

Date March 28, 2007

By 
Rodney L. Lacy
Reg. No. 41,136

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28th day of March 2007.



Name



Signature